

**MINUTES OF A SPECIAL MEETING OF THE COMMON COUNCIL
OF THE CITY OF JASPER, INDIANA
JANUARY 20, 2014**

A special meeting of the Common Council of the City of Jasper, Indiana, was held on Monday, January 20, 2014 in the Council Chambers of City Hall located at 610 Main Street.

Call to order.

Presiding Officer Mayor Terry Seitz called the meeting to order at 8:00 p.m.

Purpose. Mayor Seitz said the purpose of the special meeting was to consider information and make recommendation regarding action to be taken with regard to pending litigation.

Roll Call.

Clerk-Treasurer Juanita S. Boehm called the roll.

Mayor Terry Seitz	Present
Council members:	
Gregory Schnarr	Present
David Prectel	Absent
Thomas Schmidt	Present
Earl Schmitt	Present
Kevin Manley	Present
Randall Buchta	Present
Raymond Howard	Absent
City Attorney Renee Kabrick	Present
Clerk-Treasurer Juanita S. Boehm	Present

Clerk-Treasurer Boehm announced that in order to have a quorum for the meeting, a majority of the council members must be in attendance. Five of the seven council members were in attendance, which is a majority; therefore, there was a quorum for the special meeting.

Bill Kaiser and Greg Neibarger, outside counsel for the City, were present. Kaiser said this evening you will have the opportunity to vote to approve or reject the settlement terms as they were presented to you at the executive session on Thursday, January 16, 2014. It seems appropriate to recall the history of this case in preparation to vote on this matter.

In August of 2011, Healthy Dubois County drew the City of Jasper into litigation for the purpose of halting the vote of the Jasper Common Council on the Lease of the Jasper power plant by Twisted Oak Corporation. However, based on the decision of the Trial Court Judge, HDC was immediately forced to withdraw that part of its lawsuit seeking to stop the vote. HDC went forward with allegations that the City violated Indiana's Open Door Law during lease negotiations. The City was successful at first trial. HDC did not produce ANY EVIDENCE of violation of the Open Door Law by the City. Unfortunately, HDC made the

decision to proceed with an appeal based on a procedural error that occurred during the first trial. And, HDC was successful on its appeal.

After the case was sent back to the trial court for a new trial, the Judge ruled that HDC would ONLY be allowed to try new Open Door Law claims. I note, these were claim that HDC had originally raised only weeks before the first trial. It is also important to note that, this decision was made as part of the Court's ruling on the City's Motion for Partial Summary Judgment. During that same ruling, the Judge also found that HDC DID NOT follow Open Door Law procedures itself, THEREFORE HDC WAS NOT ENTITLED to recover attorneys' fees – a point of contention that HDC refused to concede despite the Judge's ruling.

In July, 2013, the parties entered brief settlement discussions. HDC offered to settle the litigation, but demanded terms that the City found to be unreasonable. Some of these terms included admission by the city to Open Door Law violations; admission by the City of potential harmful health effects of the Jasper Clean Energy project; abandonment of the Jasper Clean Energy Project, and payment, by the City of HDC's legal fees and expenses. The City rejected the terms proposed by HDC, but provided a counter-offer which included the following terms:

- Mutual dismissal of lawsuit
- Each party to pay their own fees

HDC rejected the City's counter-offer.

HDC recently approached the City again to reopen settlement discussions. In its proposal, HDC demanded that the City reimburse its legal fees in the amount of nearly ¼ Million Dollars. Both the Common Council and the Utility Service Board rejected those terms during a publicly held special meeting. However, both groups authorized further settlement discussions.

Thereafter, several passes at attempted settlement terms occurred among counsel. On Wednesday, January 15, HDC's counsel advised the City that HDC would be willing to settle the litigation as follows:

- mutual dismissal of the litigation
- each side pay their own legal fees

These terms should look familiar...for these are the City's exact and original settlement terms authorized in August, 2013.

It is important to note, that if you vote to approve the settlement terms as presented, there is NO ADMISSION to any violation by the City of Indiana's Open Door Law.

Utility Service Board Chairman Wayne Schuetter then advised the Council of the action taken by the Utility Service Board earlier this evening. The recommendation of the Utility Service Board to the Council is to also approve the settlement terms and move forward with the project. Accepting the settlement terms is in no way stating the City was in violation of the open door law.

Thereafter, a **motion** was made by Council member Kevin Manley and seconded by Council member Earl Schmitt to approve the acceptance, by Healthy Dubois County, of the settlement terms, namely [1] Mutual Dismissal of all claims by each party; and [2] Payment, by each party, of its own fees. Motion carried 5-0.

Adjournment. There being no further business to come before the board, a motion was made by Council member Thomas Schmidt and seconded by Council member Randall Buchta to adjourn the meeting. The motion carried 5-0 and the special meeting adjourned at 8:10 p.m.

The minutes were hereby approved _____ with X without corrections or clarification this 19th day of February, 2014.

Mayor Terry Seitz

Attest: _____
Juanita S. Boehm, Clerk-Treasurer